IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8443 of 1994

WITH

SPECIAL CIVIL APPLICATION No 8310 of 1994
SPECIAL CIVIL APPLICATION No 8311 of 1994
SPECIAL CIVIL APPLICATION No 8312 of 1994
SPECIAL CIVIL APPLICATION No 8313 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL TEXTILE CORPORATION LTD. & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 8443, 8310 to 8313 of 1994
MR BR GUPTA for Petitioner No. 1-2
MR HASIT DAVE, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 20/10/2004

COMMON ORAL JUDGEMENT

Since common issue is involved in all these petitions, they are being disposed of by this common order and judgment.

2. The petitioner No.1 i.e. National Textile Corporation (Gujarat) Limited is common petitioner in all these petitions and the another petitioner in each of these petitions are the respective Mill Companies which are unit of petitioner No.1. In all these petitions, a challenge was made to the notice of recovery issued by the Mamlatdar under Section 154 of the Bombay Land Revenue Code.

3. It is the case of the petitioners that the petitioner No.1 is registered as Sick Industrial Unit before the B.I.F.R. under the Provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The reference was made to the B.I.F.R. and pursuant to the said reference, after considering petitioner-Corporations's application and financial position, B.I.F.R. in its meeting held on 16.03.1993 decided and declared the petitioner No.1 Corporation to be a sick industrial company under Sick Industrial Companies (Special Provisions) Act, 1985 and also ordered an inquiry under Section 16 of the said Act and appointed Industrial Development Bank of India (I.D.B.I.) as the Operating Agency for the purpose of the said inquiry.

4. Mr. B.R. Gupta, learned advocate appearing for the petitioner Corporation has submitted that in view of the Provisions contained in Section 22 (1) of the SICA Act, 1985, the recovery sought to be enforced by the respondent authority by impugned notice is not permissible in as much as the specific embargo contained under the said sub-section for effecting or enforcing any recovery against the sick companies. He has further submitted that by virtue of the said provisions, the respondent authorities are restrained from enforcing the recovery of property tax, education cess etc. by invoking the provisions of Land Revenue Code. He has further submitted that so long as the proceedings are pending before the B.I.F.R., the impugned notice cannot be implemented and even if the respondent authorities are inclined to enforce the recovery, they have to seek prior permission of the B.I.F.R. No such permission has so far been obtained before issuing the impugned notices on the petitioners. He has, therefore, submitted that the impugned notices should be held to be illegal, unlawful,

ineffective and in violation of the Provisions contained in Section 22 (1) of the SICA Act and the same should, therefore, be quashed and set aside.

5. Mr. Hasit Dave, learned A.G.P. appearing for the respondent authorities has submitted that provisions contained in Section 22 (1) of SICA Act would not apply to the present case as it would apply only to the recovery of loans and advances. Here in the present case, the recovery which is sought to be enforced is the recovery of the property tax. He has further submitted that the property tax, education cess etc. being land revenue is the prior charge over the properties and hence, the Provisions of the SICA Act would not apply to the present case. He has further submitted that the impugned notices have been issued subsequent to the date of registration of the reference before B.I.F.R. and hence, the embargo contained in Section 22 (1) of the Act would not apply so far as the present recoveries are concerned. In this connection, he has relied on the decision of this Court in the case of CORE HEALTHCARE LIMITED V/S. STATE OF GUJARAT, 2004 (2) G.L.H. 163 wherein this Court in the context of recovery of Sales Tax, has held that as far as the arrears of sales tax till the date of registration of the reference are concerned, the amounts received by the Company have been intermingled with the other properties of the Company and, therefore, the State is prohibited from recovering such arrears from any particular property of the Company without obtaining prior consent of the B.I.F.R. However, so far as the current Sales Tax for the future period is concerned, the State Government is entitled in law to assert that henceforth the registered dealer shall not intermingle the sales-tax amounts with the properties of the Company and the same will have to be paid to the State.

6. Mr. Dave has further submitted that an appeal or revision is provided against the impugned notice and hence, this Court should not entertain these petitions as an alternative remedy is available to the petitioners.

7. After having heard learned advocates appearing for the respective parties and after having gone through the relevant statutory provisions contained in SICA Act as well as the authority relied on by the learned A.G.P., the Court is of the view that there is no such distinction which is sought to be made looking to the provisions of Section 22 (1) of the SICA Act. It will not make good the submission made by Mr. Dave to the effect that it would apply only to the recovery of loans

and advances. On the contrary, Section 22 (1) operates in respect of recovery of money etc. The recovery of the property tax would squarely fall within the phraseology used in Section 22 (1). Even otherwise, this issue has come up before the Hon'ble Supreme Court in the case of GRAM PANCHAYAT V/S. SHREE VALLABH GLASS WORKS LTD., (1992) 86 STC 41 (SC) and even the Division Bench in the case of CORE HEALTHCARE LIMITED V/S. STATE OF GUJARAT,(SUPRA) has taken note of this distinction and has held that since the Apex Court in the said case was concerned with the case of the Company in the matter of recovery of arrears of property tax levied on the property of the Company, there was no question of passing on incidence of current tax to any other person, unlike the sales-tax liability which the Company passes on to the purchasers. This observations itself makes it clear that the decision taken by this Court in CORE HEALTHCARE LIMITED V/S. STATE OF GUJARAT, is confined to the recovery of the Sales Tax wherein after the registration of the reference before the B.I.F.R., if the Sales Tax is collected by Sick Industrial Unit, it is a case of passing of incidence of current tax to any other person and in that context, the Court is of the view that the ratio of Core decision cannot be applied to the facts of the present case. It is true that an alternative remedy is available to the petitioners. But here in the present case, the notice itself cannot be enforced or implemented against the petitioner Corporation and to this extent, the notice will have to be held as without jurisdiction in view of the provisions contained in Section 22 (1) of the Act. Keeping this fact in mind, this Court thinks it fit and proper to exercise its writ jurisdiction under Article 226 of the Constitution of India and does not think it just and proper to direct the petitioner to avail the alternative remedy.

8. In the above view of the matter, all the impugned notices in each of these petitions are hereby quashed and set aside. It is, however, clarified that the Court has not gone into the merits of the matter and has not expressed any opinion about the correctness of the demand. In view of the Provisions contained in Section 22 (1) of the Act, since the matter is pending before the B.I.F.R., the recovery of the property tax by the impugned notices cannot be enforced. However, it is open for the respondent authorities to seek prior permission of the B.I.F.R. for enforcement of the recovery in question. It is also open for the respondent authorities to enforce the demand once the petitioner Corporation goes out of the net of the B.I.F.R.

9. Subject to the above observations, all these petitions are accordingly allowed. Rule made absolute without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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